IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1900.

THE FREEPORT WATER COMPANY,
Plaintiff in Error,

vs.

THE CITY OF FREEPORT,
Defendant in Error.

REPLY OF PLAINTIFF IN ERROR.

MAY IT PLEASE THE COURT:

We beg leave to submit the following suggestions in reply to several points made by counsel for defendant in error.

(1) The "theme" which underlies, and around and upon which counsel builds his argument, and which repeatedly reappears, *namely:* that the ordinance of June 6, A. D. 1882, is an exclusive license, and therefore a monopoly; and that such ordinance contains an agreement that the city shall purchase the plant *or* extend the

franchise *upon the expiration* of said thirty years; was not raised in or by the special pleas of defendant in error. Defendant in error in arguing such propositions is simply *begging the question* presented upon the record for determination.

As stated by us, however, such question "does not arise, and should not enter into the determination of this case." (Arg., p. 78.) It is not a proper or necessary issue in the case.

The only question raised in the special pleas filed by defendant in error was as to the *power* of the municipal council of the City of Freeport to pass an ordinance under the "statutes of said State (of Illinois) relating to "water works," *re-establishing* water rates under and by virtue of the ordinance of February 10, 1896.

Such special pleas do not attack the validity of the ordinance of June 6, 1882, either for fraud or because such ordinance is too broad, or because such council has no power to pass such ordinance.

The ordinance of February 10, 1896, adopts and reaffirms the ordinance of June 6, 1882, except, only, to the extent of, and so far as relates to the water rates then sought to be re-established.

But, if counsel's contention were true, such agreement would simply have the effect of rendering the contract *pro tanto* invalid. It would not affect the remainder of the contract. (Authorities, Arg., p. 78.)

(2) It is not claimed by counsel for defendant in error that the ordinance of June 6, 1882, if it be a monopoly, is contrary to any constitutional limitation.

The cases cited by us (Argument, p. 77) cover this point.

(3) The fact that the ordinance creates an *exclusive* license does not render the contract void.

The cases of *Walla Walla Water Company* v. *City of Walla Walla*, 172 U. S., 1 (cited oy us at page 111); and *Cunningham* v. *City of Cleveland*, 98 F. R., 15 (cited by us at page 57), hold that if a municipality improperly grant an exclusive license, it is not thereby prevented from licensing others for the enjoyment of similar privileges.

To the same effect are the cases of *Lehigh Water Co.* v. *Easton*, 121 U. S., 388; *Biennville Water Co.* v. *Mobile*, 175 U. S., 109.

(4) The case of *Long Island Water Supply Co.* v. *Brooklyn*, 166 U. S., p. 685 (cited by counsel), is not *adverse* to our contention.

On the contrary, this case supports our contention that the property rights of plaintiff in error can only be taken by due process of law. In that case, the property of the water works was taken by the city. A statute authorized such taking. The value of the property rights of the water company so taken was, however, *first* ascertained by due process of law, *to wit*, by proper condemnation proceedings.

Respectfully submitted,

GEORGE C. FRY and
JAMES W. HYDE,
Attorneys for Plaintiff in Error.

GEORGE C. FRY,
Of Counsel.